

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION, and
SPIRIT AIRLINES, INC.,

Defendants.

Case No. 1:23-cv-10511-WGY

**PLAINTIFF STATES' MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF CONSENT MOTION TO EXTEND TIME TO MOVE FOR
ATTORNEYS' FEES**

Plaintiffs, the Commonwealth of Massachusetts, the District of Columbia, and the states of California, Maryland, New Jersey, New York, and North Carolina (collectively, Plaintiff States), move this Court for an order extending the time for Plaintiff States to file a motion for attorneys' fees and costs, pursuant to Fed. R. Civ. P. 6(b)(1) and 54(d). Plaintiff States request this extension to allow time for the parties to continue to confer and attempt to reach agreement on attorneys' fees and costs issues. Pursuant to L.R. D. Mass. 7.1(a), the undersigned counsel conferred with counsel for Defendants JetBlue Airways Corporation (JetBlue) and Spirit Airlines, Inc. (Spirit) (collectively Defendants). JetBlue and Spirit consent to the relief requested by Plaintiff States.

ARGUMENT

On July 28, 2022, JetBlue and Spirit announced that they had reached an agreement that JetBlue would acquire Spirit. On March 31, 2023, Plaintiff States and the United States

Department of Justice filed an amended complaint to enjoin JetBlue's proposed acquisition of Spirit, pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 16 of the Clayton Act, 15 U.S.C. § 26. Section 16 of the Clayton Act provides that "any person . . . shall be entitled to sue for and have injunctive relief . . . against threatened loss or damage by a violation of the antitrust laws," including a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Plaintiff States are "persons" under Section 16 of the Clayton Act. *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 260-261 (1972).

On January 16, 2024, this Court issued an Order permanently enjoining Defendants "from executing the proposed merger as agreed on July 28, 2022." Section 16 of the Clayton Act states that "[i]n any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorneys' fee, to such plaintiff." 15 U.S.C. § 26. Plaintiff States will seek their attorneys' fees and costs as prevailing plaintiffs in this action. On January 17, 2024, this Court issued Judgment in favor of the Plaintiffs. Defendants JetBlue and Spirit filed a Notice of Appeal on January 19, 2024.

On January 25, 2024, Plaintiff States sought an extension of time for their motion for attorneys' fees and costs in order to allow the parties to meaningfully meet and confer and attempt to reach resolution. This Court granted that motion on January 30, 2024, and ordered that Plaintiff States file their motion for attorneys' fees and costs twenty-one (21) days after the resolution of Defendants' appeal.

Defendants' appeal was dismissed on March 5, 2024. On March 25, 2024, Plaintiff States moved for an extension of time to file their attorneys' fees and costs to provide the parties additional time to confer and attempt to reach resolution. This Court granted that motion on March 26, 2024. Plaintiff States moved for another extension of time to file their attorneys' fees

and costs on May 21, 2024. This Court granted that motion on May 23, 2024. Pursuant to that order, Plaintiff States' motion for attorneys' fees and costs is due on July 26, 2024.

Plaintiff States and Defendants are continuing to engage in meaningful and productive negotiations regarding attorneys' fees and costs issues, which would obviate the need for motion practice before this Court. An agreement in principle has been reached, and the parties are diligently working to finalize that agreement. Plaintiff States therefore seek an extension of six (6) weeks, until September 5, 2024, to file a motion for attorneys' fees and costs. This extension would allow Plaintiff States and Defendants to continue to meet and confer and finalize agreement on attorneys' fees and costs issues. The parties do not presently anticipate seeking another extension of time.

Defendants consent to this request for an extension of time.

Accordingly, for good cause shown and with the consent of Defendants, Plaintiff States request that the Court grant an order under Fed. R. Civ. P. 54(d)(2) extending the time for Plaintiff States to file a motion for attorneys' fees and costs for six (6) weeks, or until September 5, 2024.

Dated: July 25, 2024

Respectfully submitted,

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Certificate of Service

I certify that on July 25, 2024, I caused a true and correct copy of Plaintiff States' Memorandum of Points and Authorities in Support of Consent Motion to Extend Time to Move for Attorneys' Fees to be served upon the parties of record through the Court's ECF system.

/s/ Jessica V. Sutton
Jessica V. Sutton
Special Deputy Attorney General